

State of Rhode Island – Division of Taxation

Sales and Use Tax

Regulation SU 04-147

Local Meals and Beverage Tax

I. Definitions

“Beverage” means all nonalcoholic beverages, as well as alcoholic beverages, beer, lager beer, ale, porter, wine, similar fermented malt or vinous liquor.

"Meal" means any prepared food or beverage offered or held out for sale by any eating and/or drinking establishment for the purpose of being consumed by any person to satisfy the appetite and which is ready for immediate consumption. All such food and beverage, unless otherwise specifically exempted or excluded herein shall be included, whether intended to be consumed on the seller's premises or elsewhere, whether designated as breakfast, lunch, snack, dinner, supper or by some other name, and without regard to the manner, time or place of service.

"Eating and/or drinking establishments" means and includes restaurants, bars, taverns, lounges, cafeterias, lunch counters, drive-ins, roadside ice cream and refreshments stands, fish and chip places, fried chicken places, pizzerias, food and drink concessions, vending machines, or similar facilities in amusement parks, bowling alleys, clubs, caterers, drive-in theaters, industrial plants, race tracks, shore resorts or other locations, lunch carts, mobile canteens and other similar vehicles, and other like places of business which furnish or provide facilities for immediate consumption of food at tables, chairs or counters or from trays, plates, cups or other tableware or in parking facilities provided primarily for the use of patrons in consuming products purchased at the location.

Retailers selling prepared foods in bulk either in customer-furnished containers or in the seller's containers, for example “Soup and Sauce” establishments, are deemed to be selling prepared foods ordinarily for immediate consumption and as such are considered eating establishments.

II. General

All “eating and/or drinking establishments” are required to charge and collect a one percent (1%) local tax on the sales of “meals” and/or “beverages” within this state, effective August 1, 2003.

The tax applies whether or not the meals and/or beverages are prepared in the eating and/or drinking establishment and whether or not consumed on the premises. The rate of 1% must be shown separately on the bill of sale. However, in specific transactions where no receipt is provided by the retailer, i.e. vending machine sales, liquor sold at a bar, etc., the local tax as well as the state sales tax is considered included in the total sales price of the meal and/or beverage sold.

The local meals and beverage tax is administered and collected by the Division of Taxation and unless provided herein, all the administration, collection and other provisions of the state sales tax law (Chapters 18 and 19, Title 44) apply.

All local taxes received by the Division of Taxation will be distributed to the city or town where the meals and/or beverages are delivered. Accordingly, each eating and/or drinking establishment must report the local tax on its monthly or quarterly sales tax returns by city or town where the meals and/or beverages are delivered. The 1% does not apply if the meal and/or beverage is delivered outside of this state.

III. Food Stores and Supermarkets

There are two criteria which must be met for a sale to be subject to the 1% local tax. The first consideration is whether or not the item sold is a meal and/or beverage as defined by law. The term “meal” is defined as any prepared food or beverage. Beverage includes all alcoholic and nonalcoholic beverages. The second consideration is that the meal and/or beverage be sold by an eating and/or drinking establishment as defined by law.

Ordinarily, eating and/or drinking establishments do not mean and include food stores and supermarkets. However, the law defines “eating and/or drinking establishments” as restaurants, bars, taverns, lounges, cafeterias, lunch counters ...and other like places of business which furnish or provide facilities for immediate consumption of food at tables, chairs or counters or from trays, plates, cups or other tableware ...provided primarily for the use of patrons in consuming products purchased at the location. Since the activities of some food stores and supermarkets fall within the definition, such stores would qualify as “eating and/or drinking establishments” when selling prepared food and/or beverages.

Following are some examples of food store operations that require the collection and remittance of the local tax:

Example 1: A food store provides facilities for immediate consumption of prepared food and/or beverages at tables, chairs, or counters in a specific area of the store. The prepared food and/or beverages are purchased by customers from employee(s) or at a cash register in that specific area only. The specific area is considered an eating or drinking establishment and all sales of prepared food and/or beverages from that specific area only are subject to the local tax, whether consumed on the premises or not.

Example 2: A convenience or food store provides facilities for immediate consumption of prepared food and/or beverages at tables, chairs, or counters in a general area of the store. However, there is no separate cash register to ring up the prepared food nor are there employee(s) attending to customers in the area where the tables are located. Customers may purchase prepared food and/or beverages from anywhere in the store and use the tables, chairs, or counter to consume the items. Under this setup, the store is considered an eating and/or drinking establishment and the local tax applies to all prepared food and/or beverages purchased throughout the store, whether consumed on the premises or not.

Individual prepackaged or factory-sealed bags or packages of chips, popcorn, nuts, trail mix, crackers, cookies, snack cakes, or other snack foods sold by food or convenience stores are not considered prepared foods and are not subject to the 1% local tax. However, packages of these items of five (5) ounces or less continue to be subject to the 7% state sales taxes as food for immediate consumption.

Chilled bottles or containers of fruit juices/drinks, milk, soda, water, iced coffee/tea, etc. are subject to the local as well as the 7% state sales tax when sold in containers or bottles of 24 ounces or

less. However, such drinks are not subject to the 1% local tax if a food or convenience store is not an eating and/or drinking establishment.

IV. Delicatessens

Example: A delicatessen store or a deli area within a food store sells prepared food as part of a party platter, deli tray, etc., but does not provide facilities for immediate consumption of prepared food at tables, chairs, or counters in the store. Since the deli acts as a caterer for a portion of their deli business, the entire deli area is considered an eating and/or drinking establishment under the law. Accordingly, all sales of prepared food including individual sandwiches and servings as well as the catered food from the deli area are subject to the 1% local tax as well as the state 7% sales tax, whether served or picked-up at the deli area or delivered to a customer's location.

In the event that the delicatessen or food/deli store provides facilities for immediate consumption of prepared food at tables, chairs, or counters in a general area and the same facts stated above exists, the entire store is considered an eating and/or drinking establishment and the 1% local tax, as well as the 7% state sales tax, applies to food catering sales as well as all prepared food and/or beverages purchased throughout the store, whether consumed on the premises or not.

If a separate register is maintained in the deli area to record sales of prepared and catered food from the deli area only, the deli area is an eating and/or drinking establishment and any prepared food and/or beverages sold from the other areas of the store would not be subject to the local tax.

R. GARY CLARK
TAX ADMINISTRATOR

EFFECTIVE: January 1, 2004

CROSS REFERENCE: SU 04-59 "Meals"; SU 02-97 "Room Rentals-By Hotels, Rooming Houses, Tourist Camps"